ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
DAVID M. GLOVER, JUDGE

DIVISION I

CACR07-322

February 6, 2008

MARK A. QUALLS & LAVAN P. QUALLS APPELLANT	APPEAL FROM THE GREENE COUNTY CIRCUIT COURT [CR-04-496]
V.	HONORABLE JOHN N. FOGLEMAN, CIRCUIT JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

Mark and Lavan Qualls were each convicted by a Greene County jury of the offense of arson and fined $15,000. The Quallses present three sufficiency arguments on appeal: (1) the expert report and testimony of State's witness Dennis Akin, a forensic chemist, supports their position and the trial court erred by failing to grant their motions for directed verdict; (2) the trial court erred in failing to grant a directed verdict in their favor because the proof presented by the State showed that its theory of how the fire started was not plausible; (3) the trial court erred in failing to grant a directed verdict in their favor because the State's proof that they were involved in starting the fire was circumstantial and insufficient to exclude all other reasonable conclusions. Appellants'

arguments can be fairly summarized into whether there was sufficient evidence to support the State's theory that an ignitable substance was used to start the fire and that appellants were responsible for starting the fire with the ignitable substance. We affirm.

In *Allen v. State*, 40 Ark. App. 158, 159, 842 S.W.2d 468, 468-69 (1992) (citations omitted), this court stated:

> In reviewing the denial of a motion for directed verdict, we consider the evidence in the light most favorable to the appellee and affirm the trial court's decision if there is substantial evidence to support the conviction. Substantial evidence is evidence of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resort to speculation or conjecture.

Arson, like any other crime, may be proved by circumstantial evidence, which, when properly connected, furnishes a substantial basis for a guilty verdict. *Bush v. State*, 250 Ark. 224, 464 S.W.2d 792 (1971); *Carpenter v. State*, 204 Ark. 752, 164 S.W.2d 993 (1942). Evidence that is mostly, if not wholly, circumstantial can present a substantial basis to support a jury verdict. *See Parris v. State*, 270 Ark. 269, 604 S.W.2d 582 (Ark. App. 1980).

A person commits arson if he or she "starts a fire or causes an explosion with the purpose of destroying or otherwise damaging any property, whether his or her own or property of another person, for the purpose of collecting any insurance for the property." Ark. Code Ann. § 5-38-301(a)(1)(B) (Supp. 2007). Arson is a Class A felony if the property sustains damage in an amount of at least fifteen thousand dollars but less than one hundred thousand dollars. Ark. Code Ann. § 5-38-301(b)(5). There is no

presumption that an unexplained fire is of incendiary origin. *Hancock v. State*, 204 Ark. 174, 161 S.W.2d 198 (1942). In *Ross v. State*, 300 Ark. 369, 377, 779 S.W.2d 161, 164 (1989), our supreme court held:

> In order to overcome the common law presumption against arson, this court has stated that the State must prove not only the burning of the building, but the evidence must also disclose that it was burned by the willful act of some person criminally responsible for his acts, and not by natural or accidental causes.

See also Allen v. State, supra.

Summary of Initial Investigation

The assistant fire chief of the voluntary fire department and the chief criminal investigator of the sheriff's department, both of whom responded to the fire, testified consistently about the minimal amount of clothing they observed in the dresser drawers and closets in the bedrooms. They similarly testified about seeing nails in the walls of the house, but no pictures. The chief criminal investigator testified that Ms. Qualls told him at the scene of the fire that she did not carry anything out of the house; that he then asked Ms. Qualls if she wanted them to get any pictures out of the house, and she told him the pictures had all burned up, even though she had not yet been back in the house after the fire; and further that he asked her if she took her purse out and she said "no," but he did not find a purse in the house. Both the assistant fire chief and the chief criminal investigator, along with the property-claims adjuster of the insurance company insuring the residence and the fire and arson investigator hired by the insurance company, each confirmed that some kind of liquid had been sprayed on the walls and baseboards in the

house. The two specialists employed by the insurance company further observed run patterns on the base of the walls. The fire and arson investigator observed a soot line along the perimeter of the rooms above the baseboards "except in the laundry room" and he testified that there were indications that a spray was deliberately disbursed above the baseboards to spread the fire from the kitchen into the other areas of the house.

The proof at trial was that the fire was concentrated in the kitchen; that the cabinets and stove were burning; that the floor in the kitchen was rough; that the ceiling had caved in; and that an empty bottle of lamp oil was found in the kitchen area and another half-full bottle of lamp oil was found in the living room. Other proof included no lamps using that type of lamp oil being seen in the house; Ms. Qualls and her son both appeared fully dressed and outside the house when the first responders arrived in the middle of the night; there was no indication of forced entry into the house; a camper was in the backyard containing a large amount of clothing, suitcases, and other items; and on the night of the fire the knobs on the stove were found in an "on" position with no pots and pans on the stove, but several days later it appeared that the knobs had been broken off the range.

The appellants' son told the investigators that there was a gun safe in the house with forty-two guns and a lot of ammunition. However, on investigation, no gun safe was found in the house, only an indentation where it appeared that a gun safe had been at one time. Mr. Qualls told the investigators that he had removed the safe the Friday before the fire because one of the grandchildren had broken it loose from the floor and he had

moved it to the shed; however, the investigators found no indication in the house that the safe had ever been bolted down.

Several days following the fire, investigators found a letter in a roll-top desk at the house entitled "things not to forget," which Ms. Qualls admitted she had written, but she said it was a long time ago and dealt with other things. The letter referred to things in the house and primarily included a specific list of things to take, including stocks and car titles, guns, pictures, electronics, money, and furniture.

The property claims adjuster determined that the stove was the point of origin and said that a claim for less than $30,000 was submitted for repair to the home. A claims service manager for the insurance company testified that the claim was denied.

Evidence of Arson Investigator and Forensic Chemist

Gerald Alsup, the fire and arson investigator, testified that he was hired by the insurance company to examine the house and determine the origin and cause of the fire. He said that the kitchen area had the most damage, and that the surface of the range appeared to have the heaviest concentration of fire damage. He said that when he looked at the surface of the range, the counter tops, and the kitchen floor, he noticed numerous patterns consistent with the disbursement of an ignitable liquid, and that the patterns on the counter top were consistent with a pour pattern, meaning that when a liquid is poured out it puddles up or it runs, and that when it burns, it leaves a demarcated pattern consistent with the fuel burning in one area. Alsup said that because there was no reason for the pour patterns to be there, other than the fuel being spilled or deliberately

disbursed, those areas were important because they usually did not find patterns like that in a normal house fire. With respect to the linoleum floor, the only pattern that Alsup saw was in front of the range, and he said that it was consistent with something running off the surface of the range onto the floor, and that unless the fire began at floor level, there would not be patterns like that on the floor unless there was an accelerant or ignitable liquid there to initiate burning. Alsup said that it appeared that liquid was disbursed onto the "L" shaped counter from the back side of the counter going toward the range. He explained that in this case the fire burned out due to lack of oxygen, because the nature of the accelerant was paraffin; if the accelerant had been gasoline or something more volatile than wax, the fire would have probably spread more quickly. Alsup explained that he had found a bulb in the kitchen that was pointing directly down toward the range; that the bulb's distortion would point to the direction of the heaviest concentration of the fire; and that it was consistent with his opinion that the heaviest concentration was in the range area. Alsup saw nothing that would be consistent with an electrical fire. Alsup said that the burn patterns, the inconsistency with the liquid that appeared to have been dispersed across the range, and the fact that the range was on high but there was no indication of anyone cooking, as well as the evidence that he collected made him believe that the fire was intentionally set and that the range was used to initiate ignition of the liquid.

Alsup took samples from the kitchen and bathroom and sent them to a lab for analysis. In the first report, dated September 15, 2004, the report stated that the debris

from the kitchen counter at the range and from the bathroom floor failed to reveal the presence of an identifiable ignitable liquid. However, the next sentence of the report stated that the failure of any sample to demonstrate the presence of an ignitable liquid did not preclude the presence of one but was merely a statement that none was found in that particular sample. Alsup testified that a sample of unburned portions of the vinyl flooring from the kitchen floor and from the bathroom floor as well as a glass jar containing clear liquid from the lamp oil bottle found in the house were subsequently submitted because the only way to determine if the liquid was involved in the fire was to obtain samples of the flooring that were not involved in the fire for comparison. In a second lab report, dated October 4, 2004, the vinyl sheet flooring was found to contain small amounts of normal paraffins, and the liquid was found to contain components identifiable with a normal paraffinic product consistent with the normal paraffins found in the debris sample. There was a greater abundance of the normal paraffinic constituents present in the debris, and it was concluded that the debris samples contained components in the liquid product in addition to the components inherent in vinyl flooring.

Alsup testified that there was no presence of an identifiable ignitable liquid in the samples, but that he had encountered many cases in which, due to the intensity of the fire, all of the liquid is consumed but that the burn pattern remains. He said that there could be no evidence of the liquid remaining, but the burn pattern remained. Alsup said that there was a substance sprayed on the surface of the range and that the range was the ignition source, stating that that the four burners were on high and that there had to be some

human intervention for the knobs to be in that position. He stated that he believed a paraffin wax substance was sprayed from a distance onto the burners and not poured directly on the range.

Dennis Akin, the forensic chemist who tested the samples presented by Alsup, testified that the first report he submitted to Alsup stated that the tests failed to reveal the presence of an identifiable ignitable liquid, but that the report also stated that the failure of any sample to demonstrate the presence of an ignitable liquid did not preclude the presence of one. Akin said that those types of samples were never negative and that there could be something that was too small to identify or that was covered up by too much background. Akin said that with regard to his second report, he could not say for sure that the lamp oil that was submitted caused the extra presence of normal paraffins in the vinyl flooring, but that there was certainly an extra presence of normal paraffins present in the fire debris samples from the first two submissions as compared to the flooring that was not in the fire. Akin said that he concluded that the debris samples contained components found in the liquid product in addition to the components adherent to vinyl flooring. He stated that what he found in this particular case was a larger amount of normal paraffin on the flooring from the fire. He said that the substance found in the debris was most likely the same type of paraffins as were in the lamp oil, but that it was not identical; however, it had been through a fire, and it was not known exactly what had happened to it. Akin testified that just because an ignitable liquid was not found did not mean that it was not a set fire. He said that most likely what he found in the debris

samples was consistent with the lamp oil sample. Akin also testified that what most likely would happen if liquid paraffin was squirted on the electric burner while the burner was on high was that the paraffin would become vapor, and he could not say whether or not there would be a fire if there was nothing on the stove on which to squirt the lamp oil.

Viewing the evidence in the light most favorable to the State, we hold that there is sufficient evidence to support the Quallses' convictions. Appellants attempt to make much of the fact that no identifiable ignitable liquid was found in the samples submitted by Alsup to Akin. However, both experts testified that it was not unusual for there not to be ignitable liquids left if the fire burned all of the liquid. Alsup also testified that there were burn patterns that remained even though no ignitable liquid was found, and that the burn patterns indicated that an ignitable liquid had been poured onto the range. Appellants also argue that all Akin found in his second report was some additional normal paraffins in the debris samples, and that he could not find the identical liquid paraffin oil product. However, appellants overlook Akin's statement that the truth most likely was that what he found in the debris samples was consistent with the bottle of liquid, that it was not identical, but that it was more than consistent.

Appellants also argue that their motions for directed verdict should have been granted because the proof presented by the State as to its theory of how the fire started was not plausible. In support of this argument, appellants point to evidence they presented at trial that they had reported problems with their VCR, TV, computer, and half

of their burners on their stove not working prior to the fire. However, witness credibility is a determination of the jury, not the appellate court; the jury is free to believe all or part of any witness' testimony and may resolve questions of conflicting testimony and inconsistent evidence. *White v. State*, 370 Ark. 284, ___ S.W.3d ___ (2007). Furthermore, Alsup testified that the burn patterns indicated that some ignitable fluid had been poured onto the range. Appellants presented no evidence that refuted the testimony that the fire was deliberately set. In the total absence of any evidence that the fire could have been of other that incendiary origin, the question was properly submitted to the jury, and the jury was justified in the conclusion it reached. *See Burke v. State*, 242 Ark. 368, 413 S.W.2d 646 (1967).

Appellants finally argue that the circumstantial evidence was insufficient to exclude all other reasonable conclusions other than their guilt. We disagree.

This case is similar to *Ledford v. State*, 234 Ark. 226, 351 S.W.2d 425 (1961). In that case, husband and wife appellants were convicted of arson for setting fires that damaged but did not destroy their house. There was no doubt that the fires were of deliberate origin. There was also no indication of forced entry into the house. Furthermore, the closets appeared to have been stripped of clothing, and many boxes and suitcases containing clothing were later found in a storeroom behind the house. The family television had also been removed from the house before the fire. The appellants offered no testimony to explain away these incriminating facts and circumstances.

In the present case, there was no evidence presented to dispute the testimony that the fire was deliberately set due to the pour patterns that remained in the kitchen after the fire. On the Friday before the fire Mr. Qualls had removed the gun safe and all of the guns supposedly because one of the grandchildren had broken the safe loose from the floor, but there was no indication in the house that the safe had ever been bolted to the floor. Also, there were few personal items found in the home, and there were many nails where it looked like pictures had hung but were no longer there. When asked about pictures, Ms. Qualls said that they had all burned up, even though she had not been back into the house to see what had been damaged. Furthermore, a list was found entitled "things not to forget," which Ms. Qualls admitted writing, and it included things such as stocks and car titles, pictures, and house furnishings. At the time of the fire, a camper was seen in which there was a lot of clothing and other items. Additionally, at the time of the fire, in the middle of the night, both Ms. Qualls and her son were dressed in regular clothes, not night clothes. We hold that this evidence constitutes sufficient circumstantial evidence to support the arson convictions.

Affirmed.

BIRD and VAUGHT, JJ., agree.